

# Inspector General

United States  
Department of Defense



U.S. Army Corps of Engineers' Use of Award Fees on  
Contracts in Iraq and Afghanistan

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## Acronyms and Abbreviations

ACA	Army Contracting Agency
AFARS	Army Federal Acquisition Regulation Supplement
AFDO	Award Fee Determining Official
AFEB	Award Fee Evaluation Board
AFP	Award Fee Plan
COR	Contracting Officer Representative
CPAF	Cost-Plus-Award-Fee
DFARS	Defense Federal Acquisition Regulation Supplement
FAR	Federal Acquisition Regulation
GRD	Gulf Region Division
IDIQ	Indefinite-Delivery, Indefinite-Quantity Contracts
TAC	Transatlantic Programs Center
USACE	U.S. Army Corps of Engineers



INSPECTOR GENERAL  
DEPARTMENT OF DEFENSE  
400 ARMY NAVY DRIVE  
ARLINGTON, VIRGINIA 22202-4704

April 1, 2010

MEMORANDUM FOR COMMANDER, U.S. ARMY CORPS OF ENGINEERS  
AUDITOR GENERAL, DEPARTMENT OF THE ARMY

SUBJECT: U.S. Army Corps of Engineers' Use of Award Fees on Contracts in Iraq and Afghanistan (Report No. D-2010-049)

We are providing this report for review and comment. This audit was conducted pursuant to the requirements of Public Law 110-181, the FY 2008 National Defense Authorization Act, section 842. We considered management comments on a draft of the report in preparing the final report.

DOD Directive 7650.3 requires that all recommendations be resolved promptly. We received comments from the Director, National Contracting Organization, Headquarters, U.S. Army Corps of Engineers, in coordination with the Principal Assistant Responsible for Contracting-Winchester, on the recommendation made in this report. The comments on the recommendation were not responsive. Therefore, we request additional comments on that recommendation from the Principal Assistant Responsible for Contracting-Winchester by May 3, 2010. You should also comment on the internal control weaknesses discussed in the report.

If possible, send a .pdf file containing your comments to [audacm@dodig.mil](mailto:audacm@dodig.mil). Copies of your comments must have the actual signature of the authorizing official for your organization. We are unable to accept the /Signed/ symbol in place of the actual signature.

We appreciate the courtesies extended to the staff. Please direct questions to me at (703) 604-9201 (DSN 664-9201).

A handwritten signature in blue ink, reading "Richard B. Jolliffe", is positioned above the printed name.

Richard B. Jolliffe  
Assistant Inspector General  
Acquisition and Contract Management





# Results in Brief: U.S. Army Corps of Engineers' Use of Award Fees on Contracts in Iraq and Afghanistan

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## What We Did

Our overall objective was to determine whether award fees paid by the U.S. Army Corps of Engineers Transatlantic Programs Center (TAC) to contractors in support of operations in Iraq and Afghanistan were justified. Specifically, we evaluated procedures used by TAC for determining and awarding fees on 15 task orders worth about \$116.4 million. This audit is in response to the National Defense Authorization Act for FY 2008.

## What We Found

TAC contracting and award fee officials did not properly manage and oversee the award fee process for the 15 CPAF task orders reviewed, valued at \$116.4 million. Specifically, officials did not:

- develop adequate award fee plans for incentivizing and evaluating contractor performance,
- adequately conduct oversight and evaluation responsibilities, or
- adequately document and support award fee ratings.

This occurred because USACE did not have policies and procedures for administering award fees consistently and in accordance with Federal Acquisition Regulation (FAR) requirements. In addition, USACE did not adopt Army best practices documented in the Army Contracting Agency (ACA) Award Fee Contracts Handbook.

As a result, TAC contracting officers and award fee personnel awarded fees, totaling approximately \$20.6 million, without sufficient support, justification, or assurance that contractors were paid award fees commensurate with their level of performance.

## What We Recommend

We recommend that the Director, National Contracting Organization, Headquarters, U.S. Army Corps of Engineers, in coordination with the Principal Assistant Responsible for Contracting–Winchester, establish standard operating policies and procedures for administering an effective award fee process in accordance with the Federal Acquisition Regulation or adopt the procedures suggested in the Army Contracting Agency Award Fee Contracts Handbook.

## Management Comments and Our Response

The Director, National Contracting Organization, Headquarters, U.S. Army Corps of Engineers, in coordination with the Principal Assistant Responsible for Contracting–Winchester, provided comments on the recommendation. The comments were not responsive, and we request additional comments in response to the final report. Please see the recommendation table on the back of this page.

## Recommendation Table

Management	Recommendation Requires Comment	No Additional Comments Required
Director, National Contracting Organization, Headquarters, U.S. Army Corps of Engineers	Yes	
Principal Assistant Responsible for Contracting- Winchester	Yes	

**Please provide comments by May 3, 2010.**

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# Introduction

## Objectives

The overall objective was to determine whether award fees paid by the U.S. Army Corps of Engineers (USACE) Transatlantic Programs Center (TAC) to contractors in support of operations in Iraq and Afghanistan were justified. See the Appendix for a discussion of the scope and methodology and for prior coverage related to the audit objectives.

We performed this audit pursuant to Public Law 110-181, “The National Defense Authorization Act for Fiscal Year 2008,” section 842, “Investigation of Waste, Fraud, and Abuse in Wartime Contracts and Contracting Processes in Iraq and Afghanistan,” January 28, 2008. Section 842 requires “thorough audits . . . to identify potential waste, fraud, and abuse in the performance of (1) Department of Defense contracts, subcontracts, and task and delivery orders for the logistical support of coalition forces in Iraq and Afghanistan; and (2) Federal agency contracts, subcontracts, and task and delivery orders for the performance of security and reconstruction functions in Iraq and Afghanistan.”

## Background

### ***U.S. Army Corps of Engineers, Transatlantic Programs Center***

Headquartered in Winchester, Virginia, TAC,<sup>1</sup> a subordinate activity of USACE, is responsible for providing engineering, construction, and contracting services to the U.S. Central Command. The U.S. Central Command is a unified command with geographic responsibility for U.S. interests in 20 countries throughout the Middle East, the Gulf Region, and Central Asia. TAC also provides project management and technical and contracting support to the Gulf Region District (GRD) and the Afghanistan Engineer District located in Iraq and Afghanistan.

### ***TAC Contracts***

In January 2004, TAC awarded contracts W912ER-04-D0001 through W912ER-04-D0010 as indefinite-delivery, indefinite-quantity (IDIQ) contracts for construction-related services throughout the U.S. Central Command area of responsibility. Each contract was for a base year and up to 4 option years with a total potential value of \$1.5 billion. From these contracts, we selected 15 cost-plus-award-fee (CPAF) task orders in Iraq and Afghanistan totaling approximately \$116.4 million to review. For specific details regarding the task orders reviewed, see the Appendix. For definitions of award fees and other contracting terms, see the Glossary.

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<sup>1</sup> On October 2, 2009, the U.S. Army Corps of Engineers designated the Transatlantic Programs Center as the Middle East District, subordinate to the newly established Transatlantic Division.



## ***Cost-Reimbursement Contracts***

The IDIQ contracts allowed TAC contracting officers to issue task orders on a firm-fixed-price or cost-reimbursement contract basis. Under a cost-reimbursement contract, the Government reimburses the contractor up to the amount originally estimated for allowable costs reasonably incurred during the performance of the contract. A CPAF contract is a cost-reimbursement contract with an estimated cost and a fee provision. The fee is broken down into a base amount and an award amount paid to the contractor based on performance.

## **Review of Internal Controls**

DOD Instruction 5010.40, “Managers’ Internal Control (MIC) Program Procedures,” January 4, 2006, requires DOD organizations to implement a comprehensive system of internal controls that provides reasonable assurance that programs are operating as intended and to evaluate the effectiveness of the controls. We identified internal control weaknesses in the award fee process at TAC. TAC did not have adequate procedures in place to administer and provide oversight of award fee contracts. Specifically, TAC did not establish procedures to:

- develop adequate award fee plans (AFPs) for incentivizing and evaluating contractor performance,
- perform key award fee oversight and evaluation functions, or
- adequately document and support award fee ratings.

Implementing the recommendation in this report will improve the internal controls over the award fee process. We will provide a copy of the report to the senior officials responsible for internal controls at USACE Headquarters.

## **Finding. Award Fee Contract Management**

TAC contracting officers and award fee personnel did not properly manage and oversee the award fee process for the 15 CPAF task orders reviewed, valued at \$116.4 million. Specifically, contracting officers and award fee personnel did not:

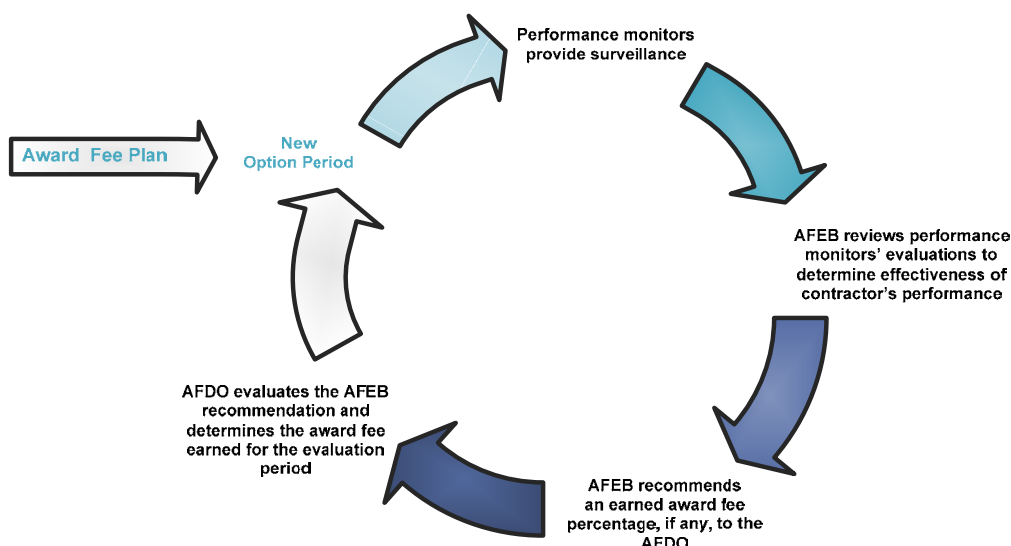
- develop adequate AFPs for incentivizing and evaluating contractor performance,
- adequately perform key award fee functions to include contract oversight and evaluation, or
- adequately document and support award fee ratings.

TAC contracting officers and award fee personnel did not properly execute and oversee the award fee process because USACE did not have policies and procedures for administering award fees consistently and in accordance with Federal Acquisition Regulation (FAR) requirements. In addition, USACE did not adopt Army best practices documented in the Army Contracting Agency (ACA) Award Fee Contracts Handbook even though this handbook provided detailed instructions for implementing an effective award fee program. As a result, TAC contracting officers and award fee personnel awarded fees, totaling approximately \$20.6 million, without sufficient support, justification, or assurance that contractors were paid award fees commensurate with their level of performance.

### **Award Fee Process**

The award fee evaluation and determination process, as suggested in the ACA Handbook (Handbook) and shown in the following figure, is a continuous process that begins with Government personnel evaluating contractor performance. The contracting officer typically appoints or designates onsite representatives or performance monitors to evaluate and report on contractor performance. An Award Fee Evaluation Board (AFEB) uses these reports, along with contractor self-assessments, to evaluate the contractor's overall performance and make an award fee recommendation to the award fee determining official (AFDO). The AFDO makes the final determination regarding the award fee earned and payable for each evaluation period and signs the award fee determination letter for the evaluation period, specifying the award fee earned and the basis for that determination.

## The Award Fee Evaluation Process



## Guidance for Managing and Overseeing the Award Fee Process

### ***Federal Acquisition Regulation***

FAR 16.405-2,<sup>2</sup> “Cost-Plus-Award-Fee Contracts,” states that the amount of the award fee to be paid is determined by the Government’s evaluation of the contractor’s performance in terms of the criteria stated in the contract. FAR 16.405-2(b)(2) also states that the evaluation criteria and the rating plan should motivate the contractor to improve performance in the rated areas. The FAR recognizes that the number of evaluation criteria and the requirements they represent differ by contract.

### ***Defense Federal Acquisition Regulation Supplement***

Defense Federal Acquisition Regulation Supplement (DFARS) Procedures, Guidance, and Information 216.405.2 states that an award fee normally is not earned when the fee-determining official has determined that contractor performance has been submarginal or

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<sup>2</sup> The audit team used a version of FAR 16.405-2 that was still current as of June 2009 to conduct this audit. On October 14, 2009, the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (FAR Councils) issued an interim rule in FAR Case 2008-008 that revises language governing award fee incentive contracts in FAR part 16. The interim rule implements Public Law 109-364, the FY 2007 National Defense Authorization Act, section 814; Public Law 110-417, the FY 2009 National Defense Authorization Act, section 867; and the Office of Federal Procurement Policy guidance memorandum, “Appropriate Use of Incentive Contracts,” December 4, 2007. The October 2009 revision did not affect the results of our audit.

unsatisfactory. The guidance also states that the basis for all award fee determinations shall be documented in the contract file.

### ***Army Federal Acquisition Regulation Supplement***

Army Federal Acquisition Regulation Supplement (AFARS) 5116.405-2, “Cost-Plus-Award-Fee Contracts,” states that once the decision to use an award fee contract is made, an evaluation plan and an organizational structure for administering the award fee process should be tailored to the acquisition. It states that the plan must clearly identify the specific award fee evaluation criteria for assessing contractor performance and specifies that contractors should not receive award fees simply for meeting contract requirements. AFARS further requires that when an AFEB is used in the award fee process, the Principal Authority Responsible for Contracting or authorized contracting officer must appoint an AFDO in writing. The AFDO then should appoint in writing the AFEB and its chairperson. These written appointment letters should clearly outline the AFEB and chairperson’s responsibilities and constraints. AFARS goes on to state that AFEB membership should consist of contracting and acquisition management personnel, including contract administration personnel with knowledge of contract requirements and contractor performance in the areas being evaluated. Documentation must be prepared to support the AFEB and AFDO decisions.

### ***Army Contracting Agency Handbook***

Although not an authoritative source, the ACA Handbook, published in September 2003, provides information and guidance for developing and administering award fee-type contracts. The Handbook presents ACA practices and procedures for using award fee contracts in general and reflects current practices of the Army acquisition community. Specifically, the Handbook addresses the following:

- developing AFPs,
- establishing evaluation criteria,
- rating contractor performance,
- establishing roles and responsibilities of award fee personnel,
- maintaining records of contractor performance, and
- ensuring an audit trail to substantiate and support award fee recommendations and decisions.

## **Management of Cost-Plus-Award-Fee Task Orders**

TAC contracting officers and award fee personnel did not properly manage and oversee the award fee process for the 15 CPAF task orders that we reviewed. Specifically, contracting officers and award fee personnel did not develop adequate AFPs for incentivizing and evaluating contractor performance; did not perform key award fee functions including contract oversight and evaluation; and did not maintain sufficient documentation and support for contractor award fee ratings.

### ***Adequate Award Fee Plans***

The AFP articulates, in one document, the plan and the means for evaluating contractor performance and determining award fee ratings. The AFP should be unique to contract requirements so that the contractor is focused and motivated to perform well in areas deemed most important to the Government. The AFP should also identify the organizational structure required to administer the award fee provisions of the contract.

### **Tailored Evaluation Criteria**

TAC contracting officials did not develop adequate AFPs. Specifically, TAC contracting officials did not develop criteria to evaluate contractor performance that were tailored to the individual circumstances of the procurement, as required by AFARS. Instead, TAC contracting officials established criteria that were vague and not measureable. For example, TAC established criteria that were intended to evaluate the contractors' efforts to control cost; however, the criteria that TAC established did not address acquisition outcomes such as meeting cost goals. The cost control criteria were overly general and included undefined terms such as "effectiveness," "timeliness," "completeness," and "reasonableness."

TAC officials' use of general evaluation criteria that were vague and not measureable made it difficult for performance monitors to provide meaningful performance feedback and evaluations to support ratings. Without meaningful feedback, performance monitors may have awarded inappropriate fees to contractors because there was no basis for determining whether the contractors fell short, met, or exceeded performance expectations. Accordingly, TAC officials need to tailor evaluation criteria in the AFPs to the requirements of individual task orders and develop criteria that are measureable so performance evaluators can provide meaningful comments and ratings to ensure that award fee payments to contractors reflect the level of performance.

### **Award Fee Rating Structure**

TAC contracting officials did not develop AFPs that effectively incentivized contractors to perform above contract requirements as required by the FAR. Specifically, TAC implemented a rating structure that did not promote contractor performance beyond the basic requirements of the task order. The AFPs included an adjectival rating structure<sup>3</sup>

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<sup>3</sup> An adjectival rating is one where adjectives such as excellent, very good, good, fair, and poor are used to indicate the degree to which the contractor's performance has met the standard for each factor evaluated. Adjectival ratings can be employed independently or in connection with other rating systems.

that evaluation personnel were to use to describe contractor performance in a narrative format based on the overall weighted points assigned by the evaluators. According to the rating structure outlined in the AFPs, a contractor would earn a rating of superior for a score of 96 to 100; excellent for a score of 86 to 95; good for a score of 76 to 85; fair for a score of 66 to 75; poor for a score of 55 to 65; and unsatisfactory for a score of 0 to 54. As a result, contractors could be paid up to 75 percent of the available award fee for fair performance or meeting contract requirements in the statement of work.<sup>4</sup>

### ***Key Award Fee Functions***

TAC contracting and award fee personnel did not perform key award fee functions, including contract oversight and evaluation. Specifically, TAC contracting and award fee officials did not establish an organizational structure for administering the award fee process. AFARS dictates that the organizational structure be appropriate for the complexity of each task order to help ensure that key award fee functions such as contract oversight and evaluation are conducted. For the 15 task orders we reviewed, not a single AFP identified key personnel responsible for the award fee process or specified the roles and responsibilities for executing and administering the award fee process. As a result, contracting officer representatives (CORs) and performance monitors were not always assigned to oversee contract performance. Specifically, TAC contracting and award fee personnel did not assign CORs or performance monitors to 8 of the 15 task orders we reviewed. COR and performance monitor responsibilities include conducting assessments in accordance with the contract terms and AFP and documenting contractor performance in assigned evaluation areas. Documentation must include examples of contractor performance that is below, meets, or exceeds contract requirements. CORs and performance monitors who evaluate and document contractor performance are critical in supporting and making award fee determinations. For five of the eight task orders that had no CORs or performance monitors, the AFEBs did not receive award fee input from onsite Government personnel.

### ***Documentation and Justification of Award Fee Ratings***

DFARS requires that award fee determination documentation be maintained in the contract file; however, TAC and GRD contracting and award fee personnel did not have adequate documentation to support award fee determinations. In general, the documentation needed to support award fee determinations includes performance monitor or COR evaluations, AFEB rating recommendations, and AFDO award fee determinations. The following table shows that award fee documentation was inadequate for all 38 evaluation periods. Documentation was incomplete or not available for 16 of the 38 evaluation periods we reviewed on the 15 task orders. The documentation for the remaining 22 award fee evaluation periods did not adequately support award fee ratings determined by rating officials.

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<sup>4</sup> A policy memorandum issued by the Under Secretary of Defense for Acquisition, Technology, and Logistics, "Proper Use of Award Fee Contracts and Award Fee Provisions," April 24, 2007, addresses the use of adjectival ratings and the amount of award fee that a contractor can earn. It states that, for solicitations issued after August 1, 2007, no more than 50 percent of the available award fee can be earned for meeting the basic requirements of the contract.



### Justification of Award Fee Ratings

Documentation	Evaluations Reviewed		
	Number	Dollar Value	Percentage of Dollar Value
Complete and justifies award fee rating	0	\$ 0.00	0.00
Complete but does not justify award fee rating	22	19,937,766.62	96.73
Incomplete	8	674,783.59	3.27
Not available	8	0.00	0.00
<b>Total</b>	<b>38</b>	<b>\$ 20,612,550.21</b>	<b>100.00</b>

The documentation used to support award fee rating recommendations to the AFEB for use in determining award fees was inadequate because CORs and performance monitors did not justify recommended award fee ratings. For example, on contract W912ER-04-D-0004, task order 12, TAC provided a single field evaluation report from an unknown source to support the award fee determination process. The field evaluation report stated that the contractor was significantly behind schedule in the design and construction of one vehicle service center. Despite the slip in schedule, the report showed that the contractor was rated at 90 percent for the “Adherence to Schedule” subfactor in the AFP. The report did not include an explanation or basis for the high performance rating that was recommended to the AFEB. In another instance, on contract W912ER-04-D-0004, task order 17, three CORs prepared contractor performance evaluations. Two of the three evaluators provided ratings without narrative support, and the third provided numerical ratings and a one-sentence explanation to support his rating recommendations to the AFEB.

AFEB recommendations to the AFDO were also insufficient to support award fee ratings. Specifically, on contract W912ER-04-D-0010, task order 3, the AFEB recommended an award fee rating of 96.7 percent to the AFDO and referenced the performance reports provided by the end users in the field. Not only were those performance reports inadequate for supporting the award fee recommendation, but the AFEB recommendation letter did not provide any explanation as to what the contractor had done to earn the high rating. The letter merely stated that field users had commented that the contractor was quick to resolve problems raised in performance reports and that the contractor showed commitment to making the Army’s involvement in Iraq a success. The support in the letter for the high performance rating did not directly relate to the criteria identified in the AFP, which the AFEB should have used as the basis for rating the contractor’s performance.

Without sufficient COR or performance monitor evaluations and documentation of contractor performance, the AFEBs and AFDOs were limited in their ability to fairly and accurately assess contractor performance to justify and support their award fee ratings. Accordingly, contracting officers need to ensure that contract files are maintained, and

that the documentation provided by award fee personnel contains narrative support and performance justification to support their award fee recommendations.

## **Need for Award Fee Guidance**

TAC contracting officers and award fee personnel did not properly manage and oversee the award fee process because USACE officials had not developed contracting policies and procedures that implement FAR requirements for administering award fees. In addition, USACE officials did not follow relevant Army award fee guidance because they stated that they were not required to follow that guidance. The FAR does not provide a level of detail necessary for executing award fee contracts in practice. Though not an authoritative source, the ACA Handbook provides additional information and guidance for developing and administering award fee contracts and reflects current best practices. To ensure the consistent application of award fee contracting practices and procedures throughout TAC, USACE officials at Headquarters and TAC should develop detailed award fee guidance or officially adopt Army award fee guidance in the ACA Handbook as their own.

## **Conclusion**

Because USACE did not have policies and procedures for administering award fees, TAC contracting officers and award fee personnel did not properly manage and oversee the award fee process for the 15 CPAF task orders reviewed. Award fees can serve as a valuable tool to help control risk and encourage exceptional contractor performance. However, to obtain these advantages, TAC officials must first implement an effective award fee process, which begins with the development of contracting policies and procedures for award fee contracting. Lacking such a process, TAC contracting and award fee personnel awarded approximately \$20.6 million without sufficient support, justification, and assurance that they received the benefit of exceptional performance from contractors.

## **Recommendation, Management Comments, and Our Response**

### ***Revised Recommendation***

As a result of management comments, we revised the draft Recommendation to clarify the nature of the actions needed to address internal control weaknesses in the award fee process.

**We recommend that the Director, National Contracting Organization, Headquarters, U.S. Army Corps of Engineers, in coordination with the Principal Assistant Responsible for Contracting – Winchester, develop detailed standard operating policies and procedures for administering an effective award fee process in accordance with the Federal Acquisition Regulation or adopt the procedures suggested in the Army Contracting Agency Award Fee Contracts Handbook. The policies and procedures should, at a minimum, address:**

- the development of AFPs that are adequate for motivating and overseeing contractor performance,
- key award fee functions for properly overseeing and evaluating award fee contracts, and
- the documentation needed to support award fee ratings.

### ***Principal Assistant Responsible for Contracting-Winchester Comments***

The Principal Assistant Responsible for Contracting–Winchester, in coordination with the Director, National Contracting Organization, partially agreed with the recommendation. The Principal Assistant stated that USACE has policy and training in place to properly administer an award fee contract. The Principal Assistant also stated that, in December 2007, USACE issued Procurement Instruction Letter 2008-03, “Proper Use of Award Fee Contracts and Award Fee Provisions,” which established policies and procedures for administering the award fee process. The Principal Assistant also stated that she is revising the Procurement Instruction Letter to include a requirement for a cost-benefit analysis before the award of a CPAF contract; a determination that adequate resources are available to properly administer CPAF contracts; and training for award fee board members and the AFDO. See the Management Comments section for complete text of the comments.

### ***Our Response***

The Principal Assistant comments were not responsive to the recommendation because they did not indicate that she would develop detailed standard operating procedures for administering an effective award fee program. During the audit, we reviewed the FAR, AFARS, and DFARS guidance applicable to award fee contracts and determined that none of these documents provided the level of detail needed to effectively administer

award fee contracts in practice. We also reviewed USACE Procurement Instruction Letter 2008-03, which implemented the April 24, 2007, Defense Procurement and Acquisition Policy memorandum, “Proper Use of Award Fee Contracts and Award Fee Provisions,” and the March 29, 2006, Under Secretary of Defense for Acquisition, Technology, and Logistics memorandum, “Award Fee Contracts.” We determined that the Procurement Instruction Letter, too, was insufficient for managing award fee contracts. Although the Principal Assistant stated that she intends to revise the Procurement Instruction Letter to establish requirements for a cost-benefit analysis and for determining the availability and adequacy of resources, the revisions will not include standard operating policies and procedures or best practices as outlined in the Handbook for overseeing and administering an award fee contract once awarded.

As a result of the comments, we revised the recommendation to state that the National Contracting Organization and the Principal Assistant should implement procedures, processes, and instructions such as those outlined in the ACA Award Fee Contracts Handbook, September 2003. The ACA Handbook contains guidance and best practices related to the following areas:

- developing and implementing an effective AFP;
- establishing evaluation criteria;
- rating and scoring contractor performance;
- developing the recommended award fee; and
- identifying essential award fee personnel, their roles and responsibilities in the award fee process, and documentation requirements.

By developing guidance similar to that in the ACA Handbook or by implementing the handbook, the Principal Assistant can correct weaknesses found in the administration of award fee contracts at TAC. We request that the Director, National Contracting Organization, and the Principal Assistant Responsible for Contracting–Winchester review these comments as well as the revised report recommendation and provide additional comments in response to the final report.

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## Appendix. Scope and Methodology

We conducted this performance audit from July 2008 through December 2009, in accordance with generally accepted government auditing standards. Those standards required that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our finding and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our finding and conclusions based on our audit objectives.

We limited our scope to CPAF task orders that USACE TAC awarded for goods and services acquired for operations in Iraq and Afghanistan. Specifically, USACE TAC had a universe of 10 contracts with award fee-type contract actions awarded during FYs 2004 and 2007. We non-statistically selected 15 CPAF task orders from 5 contracts, valued at \$116.4 million, for review. The scope of our review addressed contracting actions pertaining to the development of the award fee plan and the award fee evaluation and determination processes. We did not review the adequacy of competition and contract award decisions. See the table on the next page for a summary of the task orders reviewed.

To review the procedures for properly allocating and awarding fees on contracts, we interviewed officials at TAC and GRD who were responsible for contract administration and award fee evaluations and determinations. To review original contract documentation, we visited USACE TAC in Winchester, Virginia, and USACE GRD in Iraq.

We reviewed official contract files for the 15 task orders to determine the contracting officers' support for award fee determinations. The documentation that we reviewed dated from January 2004 to January 2009. Specifically, to determine whether the award fee process was followed and whether award fee determinations were supported, we reviewed award fee documents including COR, AFEB, and AFDO appointment letters; AFPs; COR and performance monitor evaluations and their supporting documentation; AFEB minutes and recommendations; and AFDO determinations. We also reviewed Federal, DOD, and Department of the Army regulations and guidance regarding use of award fee contracts.



### TAC IDIQ Task Orders Reviewed

Contract Number	Contractor	Task Orders	Total Value (in millions)
W912ER-04-D-0003 Task Order 0014	Contrack International, Inc.	1	\$ 4.29
W912ER-04-D-0004 Task Order 0005 Task Order 0007 Task Order 0009 Task Order 0012 Task Order 0014 Task Order 0017 Task Order 0018	Fluor Intercontinental, Inc.	7	95.12
W912ER-04-D-0005 Task Order 0006 Task Order 0010	Kellogg, Brown, and Root Services, Inc.	2	3.60
W912ER-04-D-0007 Task Order 0002	Parsons Delaware, Inc.	1	4.82
W912ER-04-D-0010 Task Order 0002 Task Order 0003 Task Order 0006 Task Order 0009	Washington International/Black & Veatch – Joint Venture	4	8.57
<b>Total</b>		<b>15</b>	<b>\$116.40</b>

Note: The total value is the task order's base amount. We did not include contract modifications and additional award fees in the total value because documentation available at TAC and GRD was insufficient to compile the data.

## Use of Computer-Processed Data

For the 15 task orders we reviewed, we relied on the data contained in the contracting files and obtained from interviews to support the finding and conclusions in this report. We used computer-processed data obtained from the Federal Procurement Data System–Next Generation only to identify CPAF task orders awarded by USACE TAC with work being performed in Iraq and Afghanistan. We used the universe of CPAF tasks orders awarded by USACE TAC to select a sample of 15 CPAF task orders for review. We did not assess the reliability of the data from the Federal Procurement Data System–Next Generation because its use did not materially affect the finding, conclusions, or recommendation in the report.

## **Prior Coverage**

During the last 5 years, the Government Accountability Office (GAO), the Air Force Audit Agency, and the Special Inspector General for Iraq Reconstruction (SIGIR) have issued six reports discussing the use of award fee contracts. Unrestricted GAO reports can be accessed over the Internet at <http://www.gao.gov>. Air Force Audit Agency reports are not available over the Internet.

### **GAO**

GAO Report No. GAO-09-630, “Guidance on Award Fees Has Led to Better Practices but Is Not Consistently Applied,” May 2009

GAO Report No. GAO-07-839, “DOD’s Lack of Adherence to Key Contracting Principles on Iraq Oil Contract Put Government Interests at Risk,” July 2007

GAO Report No. GAO-06-66, “DOD Has Paid Billions in Award and Incentive Fees Regardless of Outcomes,” December 2005

### **Air Force**

AFAA Report No. F2008-0008-FC1000, “Effective Use of Award Fees on Service Contracts,” September 11, 2008

### **SIGIR**

SIGIR Report No. SIGIR-08-009, “Appropriate Award-Fee Conversion Scales Can Enhance Incentive for Contractor Performance,” January 24, 2008

SIGIR Report No. SIGIR-05-017, “Award Fee Process for Contractors Involved in Iraq Reconstruction,” October 25, 2005

# Glossary

**Award Fee.** An award fee is an amount awarded for excellence in contractor performance as measured by the criteria defined and established in the contract. The award fee pool represents an additional amount available to the contractor to earn over the period of performance that demonstrates quality efforts toward accomplishing the tasks and functions cited in the contract.

**Award Fee Determining Official.** The AFDO is independent of the AFEB and determines the amount of award fee earned during the evaluation period. The AFDO becomes involved in the evaluation process only after the AFEB has met and agreed on a recommended award fee amount. The AFDO independently evaluates the AFEB's recommendation and considers any contractor self-assessments provided to render a final decision on the amount of award fee earned, if any.

**Award Fee Evaluation Board.** The AFEB is primarily responsible for review of the performance monitors' evaluations, the contractor's self-evaluation, and any other pertinent information for determining the overall position on the effectiveness of the contractor's performance. The AFEB is then responsible for documenting the findings and recommending an earned award fee (if any) to the AFDO.

**Award Fee Plan (AFP).** The AFP articulates in one document the plan and the means for identifying, assessing, and evaluating contractor performance for determining the fee to be awarded. This document ensures the integrity of the award fee evaluation process. A typical AFP includes the evaluation periods, amount of the award fee pool available for each evaluation period; functional areas to be evaluated; criteria to be used in evaluations; relative weights to be assigned to functional areas and the evaluation criteria; and reporting and record keeping procedures.

**Cost-Plus-Award-Fee Contract.** A CPAF contract is a cost-reimbursement contract that provides for a fee consisting of a base amount fixed at inception of the contract and an award amount that the contractor may earn in whole or in part during performance and that is sufficient to provide motivation for excellence in such areas as quality, timeliness, technical ingenuity, and cost-effective management.

**Indefinite-Delivery, Indefinite-Quantity Contract.** An IDIQ contract provides for the ordering of an indefinite quantity, within stated limits, of supplies or services during a fixed period. The government places orders for individual requirements. An IDIQ contract may be used when the government cannot predetermine above a specified minimum the precise quantities of supplies or services required during the contract period.

**Performance Monitor.** The performance monitor is the person(s) assigned by the program manager to provide input to the AFEB on contractor performance. The assigned COR normally assumes the responsibility of the performance monitor and provides input

to the AFEB on contractor performance. These individuals provide the continuous evaluation of the contractor's performance in specifically assigned areas of responsibility.

**Task Order Contract.** A task order contract is a contract for services that does not specify a firm quantity of services to be procured (other than a minimum or maximum quantity) and that provides for the issuance of orders for the performance of tasks during the period of the contract.

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# U.S. Army Corps of Engineers' Comments



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS  
DIRECTORATE OF CONTRACTING  
PRINCIPAL ASSISTANT RESPONSIBLE FOR CONTRACTING  
201 Prince Frederick Drive  
Winchester, VA 22602

REPLY TO  
ATTENTION OF

CECT-WIN

15 Jan 10

MEMORANDUM THRU Director, *SEP* National Contracting Organization, U.S. Army Corps of Engineers

FOR Program Director, Acquisition and Contract Management, DoDIG, 400 Army Navy Drive, Arlington, VA 22202-4704

SUBJECT: U.S. Army Corps of Engineers (USACE) National Contracting Organization's response to Department of Defense Office of Inspector General (DoDIG) draft report entitled, "U.S. Army Corps of Engineers' Use of Award Fees on Contracts in Iraq and Afghanistan", Project No. D2008-D000AE-0251.000, dated December 24, 2009

1. On 24 Dec 09, the DoDIG issued the above referenced draft report to the U.S. Army Corps of Engineers (USACE) National Contracting Organization (NCO) through the Principal Assistant Responsible for Contracting – Winchester (PARC-WIN) which identified three internal control weaknesses in the award fee process at the Transatlantic Center (TAC), now referred to as the Middle East District (MED), and which also included a recommendation for the NCO, in coordination with PARC-WIN, to establish standard operating policies and procedures for administering an effective award fee process in accordance with Federal Acquisition Regulation requirements.

2. The three internal control weaknesses identified in the subject draft report are as follows:

- a. Develop adequate award fee plans for incentivizing and evaluating contractor performance
- b. Adequately conduct oversight and evaluation responsibilities
- c. Adequately document and support award fee ratings

3. The NCO has taken aggressive action to remedy these internal control weaknesses and ensure that all award fee contracts are properly administered. These remedies include the following:

a. In January 2009, PARC-WIN put a moratorium on the use of award fee contracts. This required Contracting Officers to request approval to use an award fee type contract by submitting justification, including a cost-benefit analysis, for the use of this type of contract and evidence of ample resources, including properly trained and experienced personnel, to administer the contract throughout the period of performance. As the fifteen task orders identified in the above referenced report were for contingency operations in Iraq and Afghanistan, PARC-WIN acknowledges that adequate resources were not consistently available to properly administer these task orders. By requiring evidence of these resources prior to approving the use of an award fee type contract, PARC-WIN has significantly reduced the number of award fee contracts



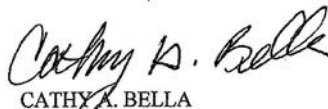
# U.S. Army Corps of Engineers' Comments

and task orders in Iraq and Afghanistan.

b. In October 2009, USACE stood up the Transatlantic Division which oversees the Middle East District, Gulf Region District – South, Gulf Region District, Afghanistan Engineering District – North and Afghanistan Engineering District – South. As a direct result, a Regional Contracting Chief (RCC) now has oversight of all award fee contracts and award fee boards which are awarded and administered by these five districts. To date, all active award fee contracts and task orders with a place of performance in Iraq and Afghanistan have award fee plans in place, proper oversight and documentation to support award fee ratings.

4. Additionally, the NCO and PARC-WIN partially-concur with the recommendation set forth in the above referenced draft report. USACE has existing policy and enterprise training in place in addition to the requirements in the Federal Acquisition Regulation and DoD, Army and USACE supplements to document the policies and procedures to properly administer an award fee contract. Defense Procurement and Acquisition Policy (DPAP) and Deputy Under Secretary of Defense (Acquisition and Technology) previously issued memorandums which identify policies and procedures for the proper use and administration of award fee contracts. In December 2007, USACE issued Procurement Instruction Letter (PIL) 2008-03, "Proper Use of Award Fee Contracts and Award Fee Provisions" which references these previously issued memorandums and establishes agency policy for establishing award fee criteria in the award fee plan. This PIL remains active; however, PARC-WIN is currently in the process of revising this PIL to include the requirement for a cost-benefit analysis to be performed prior to requesting approval for an award fee type contract, adequate resources to properly administer the contract and specific award fee training for all members of the award fee board, including the Award Fee Determining Official (AFDO). In regards to award fee training, USACE has a PROSPECT course entitled "Cost Reimbursement Contracts" which includes training on the proper administration of award fee contracts.

5. The point of contact for this memorandum is [REDACTED] who may be reached at [REDACTED]



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for Contracting – Winchester



# Inspector General Department of Defense